

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 08-20289
HON. GEORGE CARAM STEEH

vs.

D-5 CESAR GARFIO,

_____ /

ORDER DENYING MOTION FOR REDUCTION OF SENTENCE

Before the court is defendant's motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). On November 19, 2008, defendant pleaded guilty to count one of the indictment, specifically conspiracy to distribute, and to possess with the intent to distribute, more than 5 kilograms of cocaine in violation of 21 U.S.C. § 846, 841(a)(1). On March 9, 2009, the court sentenced defendant to forty-six (46) months imprisonment.

Presently before this court is defendant's *pro se* motion for modification of sentence under 18 U.S.C. § 3582(c)(2), which states:

(c) Modification of an imposed term of imprisonment.— the court may not modify a term of imprisonment once it has been imposed except that—

*

*

*

(2) in the case of defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering section 3553(a) to the extent that they are applicable, if such a

reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2).

Defendant fails to identify the applicable amendments to the sentencing guidelines which warrant the reduction of his sentence. Presumably, defendant relies on Amendment 706, which amended the base offense level for quantities of cocaine base. However, defendant's conviction on count one of the indictment was for violating 21 U.S.C. § §846, 841(a)(1), or conspiracy to distribute and to possess with intent to distribute more than five kilograms of cocaine, not cocaine base. Therefore, Amendment 706 does not effect defendant's sentencing guideline range and he is not entitled to a reduction in sentence.

Accordingly,

Defendant's motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) is DENIED [#159].

SO ORDERED.

Dated: June 20, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record and
Cesar Garfio, 2240 Hubbard Road, Youngstown, OH 44501
on

June 20, 2011, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk